

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA  
ELKINS DIVISION**

Dale P. Field, Jr.,

Plaintiff,

v.

Philip Morris USA Inc.,

Defendant.

2:20-cv-2 Judge Thomas S. Kleeh

Case No: \_\_\_\_\_  
Removed from the Circuit Court of  
Randolph County  
Civil Action No. 2019-C-101

**NOTICE OF REMOVAL AND REQUEST FOR JURY TRIAL**

Without submitting to the jurisdiction of the Court and without waiving any available defenses, including those under Rule 12 of the Federal Rules of Civil Procedure, Defendant Philip Morris USA Inc. ("PM USA") hereby removes this action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, from the Circuit Court of Randolph County, West Virginia to the United States District Court for the Northern District of West Virginia, Elkins Division. The grounds for removal are set forth below.

1. On September 20, 2019, Plaintiff *pro se* Dale P. Field, Jr., filed his Complaint in the Circuit Court of Randolph County, West Virginia, captioned *Dale P. Field, Jr. v. Phillip Morris, USA, Inc.*, Case No. 2019-C-101. True and correct copies of all process, pleadings, and orders served upon PM USA are attached as Exhibit 1.

2. Pursuant to 28 U.S.C. § 1446(b), the notice of removal of a civil action shall be filed within thirty (30) days of the defendant's receipt of formal service. 28 U.S.C. § 1446(b); *Murphy Bros. Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). Plaintiff served PM USA with a copy of the Complaint and Summons on January 6, 2020. *See* Ex. 1 at 1. Therefore, the deadline to file the notice of removal is February 5, 2020, and this removal is timely.

3. This Court is the proper forum as “the district court of the United States for the district and division within which such action is pending”—Randolph County, West Virginia. 28 U.S.C. § 1446(a).

4. Plaintiff’s Complaint alleges that he has endured “bodily, physical and continuing harm,” and that “[a]s a result of the Defendant’s actions, [he] has suffered damages to his lungs that result in a decreased capacity of lung volume usage.” Compl. at 3.

### **JURISDICTION**

5. This lawsuit may be removed to this Court pursuant to 28 U.S.C. § 1441(a), (b) because this action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332(a), in that the matter in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs, and Plaintiff and Defendant were, at the time this lawsuit was filed, and are now at the time of this removal, citizens of different states.

### **AMOUNT IN CONTROVERSY REQUIREMENT SATISFIED**

6. Plaintiff explicitly seeks damages in the amount of two million and fifty thousand dollars (\$2,050,000.00). Compl. at 4.

7. “Ordinarily, the jurisdictional amount is determined by the amount of the plaintiff’s original claim, provided that the claim is made in good faith.” *JTH Tax, Inc. v. Frashier*, 624 F.3d 635, 638 (4th Cir. 2010) (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938)). As such, Plaintiff’s demand for two million and fifty thousand dollars satisfies the jurisdictional requirement of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

### **COMPLETE DIVERSITY EXISTS**

8. Complete diversity exists between Plaintiff and PM USA. 28 U.S.C. §1332(a).

9. Plaintiff alleges, and Defendant is informed and believes, that Plaintiff was at the time of the filing of the Complaint, and at all intervening times, a citizen of the State of West Virginia. *See* Compl. at 1.

10. PM USA is now, and was at the time of filing of the Complaint and at all intervening times, a Virginia corporation with its principal place of business in Virginia.

11. PM USA reserves the right to supplement or amend this Notice of Removal.

12. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the clerk of the Circuit Court of Randolph County, West Virginia. *See* Exhibit 2.

13. Pursuant to 28 U.S.C. § 1446(d), PM USA is providing written notice to Plaintiff.

14. PM USA requests a trial by jury of all issues.

### **CONCLUSION**

WHEREFORE, PM USA hereby removes the action now pending against them in the Circuit Court of Randolph County, West Virginia, to the United States District Court for the Northern District of West Virginia, Elkins Division.

Dated: February 4, 2020

Respectfully submitted,  
SHOOK, HARDY & BACON L.L.P.

/s/ Jeremy A. Gunn

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of February, 2020, I electronically filed the foregoing Notice of Removal and Request for Jury Demand with the Clerk for the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

I further certify that I mailed the foregoing document and the notice of electronic filing by certified mail to the following:

Dale Field, Jr., #3558053  
Steven's Correctional Center  
795 Virginia Avenue  
Welch, WV 24801

/s/ Jeremy A. Gunn

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